IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.710 OF 2005

Smt. Somawanti Ramlal Manchanda .. ..Appellant
Versus
Shri 108 Pujyapad Adwait Panchayati Akhada, Udasin Panchayati Bada Akhada and Ors. .. ..Respondents

Mr.Milind M.Sathaye for appellant
Mr.V.Z.Kankaria for respondent Nos.1-1 to 1-4.

CORAM : P.V.KAKADE, J.

DATE : 5TH SEPTEMBER, 2005

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by Addl. District Judge, Nasik dated 5.3.2005 dismissing the appeal and confirming the judgment and order passed by Civil Judge, Junior Division, Nasik dated 26.10.1999 decreeing the plaintiffs' suit for possession of the suit property.

2. I have heard the learned counsel for both the parties. Perused the record.

3. The plaintiffs filed the suit for possession of

the suit property against the defendants along with consequential reliefs in respect of the property bearing survey No.417/2 admeasuring 0.53 R situated at Nasik. The plaintiff is registered trust bearing registration no.F-33(N) P.T.R 43/57 dated 25.3.1957 of the Bombay Public Trust Act and has head office at Alhabad with its branch at Trimbak Tal. & Dist. Nasik and is having several properties under the protection and management of the Manager of the trust except the work of supervision. The said Manager of the plaintiff trust had no other authority to transfer any of the properties of the plaintiff trust. Inspite of this aspect, the manager of the trust entered into a document of lease deed for the year of 1998 in respect of the suit property with the defendants, allegedly without consent and knowledge of the trust authorities. The original lease deed created sub-lease in favour of the present defendants for 95 years in the year 1967. It is the case of the plaintiffs that they did not know the suit transaction between their manager and the defendants and their manager had subjected the trust to fraud and as such the suit came to be filed for possession with declaration that the suit transaction being illegal and bad in law. The defendants contested the suit , inter

alia, submitting that the allegations made by the plaintiffs were false and on such and other grounds the suit was sought to be dismissed rasing various contentions.

. The learned trial judge after hearing both the parties and on the basis of available evidence came to the conclusion that the defendants occupation of the suit property was illegal and they were liable to be evicted from the suit property and decreed the suit. The appeal was carried to the District Court. The learned Addl. District Judge after hearing both the parties concurred with the findings recorded by the trial court and dismissed the appeal. Hence the present appeal.

4. At the outset it must be noted that there is absolutely no substantial question of law involved in this appeal. The learned counsel for the appellant sought to raise question regarding jurisdiction of the Civil Court to entertain and try the suit on the ground that the provisions of Section 2(4) of the Bombay Public Trust Act contemplated the proceeding to be filed in District Court, whereas the matter was adjudicated by

the Court of Civil Judge and as such tried without jurisdiction. However, in this regard, without further elaboration, it must be noted that the Civil Court is the proper court of original jurisdiction for the purpose of District, and therefore, the arguments advanced on behalf of the appellant is devoid of any merits.

. It was further submitted that the plaintiffs-respondents had alleged that their manager had acted behind their back and had subjected the trust to fraud, but there was no evidence on record in that regard. Moreover, it was also submitted that the delay on the part of the plaintiffs to take action from the year 1963 to 1981 amounted to acquisance on the part of the respondents-trust and therefore, on that count also the suit was liable to be dismissed. However, in this regard it must be noted that the trust’s head office admittedly is located at Allahabad and its properties are spread over at various places including District Nasik and if the Manager of the Trust has committed any mischief or fraud, it was quite possible that the Trust was not aware of it and when they came to know about it they moved the Civil Court. Apart from this aspect, the

entire suit transaction would be hit by provision of Section 36 of the Bombay Public Trust Act, as the provisions is mandatory and without permission of the Charity Commissioner no sub-lease for more than 10 years could be created between the parties by the Trust and therefore, the bar of Section 36 of the Bombay Public Trust Act has to be invoked in order to protect the property of the trust in this regard.

5. Be as it may, the fact remains that there is no substantial question of law involved in this appeal, and as such the appeal is devoid of any merits and stands dismissed with no order as to costs. Consequently Civil Application No.1204 of 2005 also stands dismissed with no order as to costs.

6. At this stage the learned counsel for the appellant prayed for Stay of the Order. In view of the facts and circumstances the Order is Stayed for six weeks on condition that the appellant shall furnish Undertaking to this Court that no third party interest shall be created on the suit property by them during the Stay period. Undertaking to be submitted within two weeks from the date of this Order.